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3097; Dec. Dig. § 762.* 1 Va.-W. Va. Enc. Dig. 503; 15 Va.-W. Va. Enc. Dig. 59.]

9. New Trial (§ 102*)—Newly Discovered Evidence—Diligence.—A new trial for newly discovered evidence is properly denied, where the movant's knowledge of the situation was such that, by ordinary diligence in searching for evidence, he would and could have ascertained what the newly discovered witness would have testified to.

[Ed. Note.—For other cases, see New Trial, Cent. Dig. §§ 207, 210-214; Dec. Dig. § 102.* 10 Va.-W. Va. Enc. Dig. 448; 14 Va.-W. Va. Enc. Dig. 780; 15 Va.-W. Va. Enc. Dig. 739.]

Error to Law and Equity Court of City of Richmond.

Action by the J. L. Mott Iron Works against J. Preston Carson and another. Judgment for plaintiff, and defendant Carson brings error. Affirmed.

Wm. P. De Saussure and *J. Kent Rawley*, both of Richmond, for plaintiff in error.

C. M. Chichester, of Richmond, for defendant in error.

GWATHMEY et al. v. LYONS.

Nov. 11, 1914. Rehearing Denied Nov. 21, 1914. . .

[84 S. E. 103.]

A petition by G. T. Gwathmey and others, members of the commission of Roads, for a peremptory writ of mandamus against S. W. Lyons. Denied.

Bowden & Heard, of Norfolk, for petitioners.

Jos. T. Lawless, of Norfolk, and *Frank L. Crocker*, of Portsmouth, for respondent.

Prayer for mandamus denied.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.